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Intergovernmental working group of experts
on the human rights of migrants

Item 11 of the provisional agenda

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS

Report of the working group of intergovernmental experts on the human rights of migrants submitted in accordance with Commission on Human Rights resolution 1997/15

Chairman-Rapporteur: Mr. Jorge A. Bustamante (Mexico)

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Introduction

1. At its fifty-third session, the Commission on Human Rights, in its resolution 1997/15, decided to establish a working group consisting of five intergovernmental experts, appointed on the basis of equitable geographical representation after consultations with the regional groups, to meet for two periods of five working days prior to the fifty-fourth session of the Commission, with a mandate to:

(a) Gather all relevant information from Governments, non-governmental organizations and any other relevant sources on the obstacles existing to the effective and full protection of the human rights of migrants; and

(b) Elaborate recommendations to strengthen the promotion, protection and implementation of the human rights of migrants.

2. The working group of intergovernmental experts was requested to submit a report to the Commission on Human Rights at its fifty-fourth session. The present report is submitted in response to that request.

I. FIRST SESSION OF THE INTERGOVERNMENTAL GROUP OF EXPERTS

A. Organization of the session

Opening and duration of the session

3. The first session of the working group of intergovernmental experts on the human rights of migrants was held at the Palais des Nations, Geneva, from 17 to 21 November 1997. The session was opened by the Acting Deputy High Commissioner for Human Rights.

Composition of the working group

4. The working group at its first session consisted of the following five experts: Mr. Jorge Bustamante (Mexico), Mr. Guillaume Pambou Tchivounda (Gabon), Mr. M. Mijarul Quayes (Bangladesh), Mr. Joaquim Ludovina do Rosario (Portugal) and Mr. Oleg V. Shamshur (Ukraine).

Election of officers

5. At its 1st meeting, on 17 November 1997, the working group elected Mr. Jorge A. Bustamante (Mexico) Chairman-Rapporteur.

Adoption of the agenda

6. Also at its 1st meeting, the working group, on the basis of the provisional agenda (E/CN.4/AC.46/1997/1), adopted the following agenda for its first session:

1. Election of officers.

2. Adoption of the agenda.

3. Implementation of Commission on Human Rights resolution 1997/15, entitled "Migrants and human rights".

Observers

7. The following States members of the Commission on Human Rights attended the session as observers: Algeria, Austria, Brazil, Chile, China, Colombia, Cuba, Czech Republic, Denmark, Dominican Republic, Egypt, El Salvador, Ethiopia, France, Indonesia, Italy, Japan, Malaysia, Mexico, Nicaragua, Russian Federation, South Africa, Ukraine and Uruguay.

8. The following other States Members of the United Nations also attended the session as observers: Estonia, Guatemala, Hungary, Morocco, Peru, Portugal, Romania, Slovakia, Thailand, Turkey and Venezuela.

9. The following non-member State of the United Nations was also represented by an observer: Holy See.

10. Representatives of the following United Nations body, specialized agencies and intergovernmental organizations attended the session as observers: Office of the United Nations High Commissioner for Refugees, UNAIDS, International Labour Organization, European Community and International Organization for Migration.

11. Representatives of the following non-governmental organizations in consultative status with the Economic and Social Council attended the session as observers: African Association of Education for Development, Commission of the Churches on International Affairs of the World Council of Churches, International Service for Human Rights and the International Movement Against All Forms of Discrimination and Racism (IMADIR).

Documentation

12. The working group at its first session had before it document E/CN.4/AC.46/1997/1 containing the provisional agenda, as well as relevant documents of the General Assembly, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities as background and reference documentation.

13. The working group also had before it the information and comments received from Governments, competent United Nations bodies, specialized agencies and intergovernmental and non-governmental organizations in reply to the Secretary-General's invitation. Those submissions were subsequently reproduced in documents E/CN.4/AC.46/1997/CRP.1 to 21, as follows:

CRP.1 Submission from Guatemala

CRP.2 Submission from Guatemala

CRP.3 Submission from the Commission for the Defence of Human Rights in Central America (CODEHUECA)

CRP.4 Submission from CODEHUECA

CRP.5 Submission from Cyprus

CRP.6 Submission from International Labour Organization (ILO)

CRP.7 Submission from the International Organization for Migration (IOM)

CRP.8 Submission from the Office of the United Nations High Commissioner for Refugees (UNHCR)

CRP.9 Submission from the Regional Association for Forced Migration

CRP.10 Submission from the Regional Association for Forced Migration

CRP.11 Submission from IOM

CRP.12 Submission from the English International Association in Lund

CRP.13 Submission from the Women's International League for Peace and Freedom (WILPF)

CRP.14 Submission from Mexico

CRP.15 Submission from the African Association of Education for Development

CRP.16 Submission from Morocco

CRP.17 Submission from Sin Fronteras

CRP.18 Submission from the International Migrants Rights Watch Committee

CRP.19 Submission from Egypt

CRP.20 Submission from UNHCR

CRP.21 Submission from El Salvador

14. The working group also had available for consultation various reports, publications, articles and other papers relevant to its mandate collected by the secretariat and/or received from various sources.

Organization and methods of work

15. With regard to its methods of work, the working group decided to work in a combination of public and closed meetings. The working group held five public meetings and four closed meetings; one meeting was closed in part.

16. In the course of public meetings, the working group held an exchange of views in the context of its mandate and received contributions from Governments, United Nations organs, specialized agencies and intergovernmental and non-governmental organizations.

17. The working group agreed that NGOs without consultative status with ECOSOC could also attend its meetings.

18. The working group decided to submit to the Commission on Human Rights at its fifty-fourth session a consolidated report covering the work of its two sessions.

B. Main issues discussed during the first session

1. Information-gathering

19. The working group interpreted its mandate to "gather information" as a need to advance in a search for an empirical basis to substantiate the assumptions made by the Commission in resolution 1997/15. This interpretation led to a discussion on the means to be taken to that end. It was decided to use a questionnaire addressed to Governments as well as to intergovernmental organizations and NGOs. Given the time constraints, the working group agreed that such a questionnaire should be as simple and short as possible, since the main objective was basically of an explanatory nature; thus, four questions were finally included.

20. The first question aimed at obtaining a general picture of basic demographic data pertaining to migration. The second one aimed at obtaining statistics and qualitative information on measures taken by Member States to promote and protect the human rights of migrants. The third question aimed at obtaining some indicators of the level of awareness of Member States about the human rights problems of migrants referred to in Commission resolution 1997/15; it was not intended to obtain precise data or a qualitative description of those human rights problems. The fourth question aimed to ascertain empirically the level of importance ascribed by Member States to the existing normative means for combating violation of the human rights of migrants by asking if they had signed and ratified specific United Nations conventions addressing human rights questions relating to migrants.

21. The questionnaire was transmitted on 2 December 1997. The text of the questionnaire is contained in annex I to the present report.

2. Regional developments

22. The working group decided to invite each of its members to present an oral review of the main trends and developments relating to migration in their respective geographical regions. A summary of the presentations is reproduced below.

23. Speaking about Africa, Mr. Pambou Tchivounda emphasized that migration was a recent phenomenon, and that even the emergence of States in Africa was a recent development. To put migration in its context, he described the three types of migration typically encountered.

24. First, there was migration within traditional geographical areas which sometimes straddled frontiers - since frontiers were not an established part of the African mind-set - which could also be called "preferred regions".

Such traditional patterns of movement might be regarded by a modern State as clandestine migration. Migration of this kind raised specific, delicate problems that had to be taken into account.

25. Second came organized migration with State blessing. For economic policy reasons, such as the need to undertake large public works, States might draw on foreign labour. This raises problems with respect to legislation, protection and responsibility.

26. Third was spontaneous migration resulting from an attractor phenomenon, as in the case of migration towards industrial metropolizes such as those in South Africa, Angola and the Democratic Republic of the Congo. There migrants also encountered problems of coexistence with already established communities that wished to assert their individuality and culture.

27. In all the above situations, the question of the right to exist and to express oneself arose. There were xenophobic reactions and risks of confrontation. It was important not to mistake the effects for the causes. It was important that migrants be aware of their rights, as well as the rights of others.

28. In addition, Africa also had to cope with globalization and its impact on migration.

29. With regard to Asia, Mr. Quayes stated that there was an interesting mix of what he referred to as the migration spectrum, with sending, receiving and transit countries and countries that were a combination of all three. There was also migration from industrialized countries. A major element was labour migration, predominantly from one country to another within the region. From South Asia, the bulk of migration was towards the Gulf. The Gulf region was an open labour market with large numbers of foreign labourers, generally arriving through regular channels. In the recent past some countries in South-East Asia had become receiving countries for labour migrants, which resulted in other countries of the subregion becoming transit countries as well as countries of origin. The subregion was faced with the general issues of transit and population movements as well as problems unique to the subregion like involuntarily relocated persons.

30. He identified a dilemma for migrant-sending States, which wished to maximize regular labour outflow and at the same time secure the maximum protection and fair treatment of their workers abroad. There was a perceived need for developing agreements between sending and receiving States and for the labour laws in receiving countries to cover vulnerable workers, such as housemaids. Trafficking, especially of women and children, posed major problems, especially in the light of the fact that women had been subjected to various types of abuse. There had been cases of women detained en route, with no means of returning home, and thereby losing the prospect of employment that had been promised to them. Women taking irregular employment became vulnerable to punishment or deportation. Concerning children, he referred to the so-called "camel jockeys" who had received media attention in the region. He said that the countries concerned were aware of the situation and were taking measures to combat the phenomenon.

31. Mr. Quayes identified globalization as another area of importance to many Governments. A truly free global market must recognize the relevance of the free movement of all factors of production, including labour. There had to be a place for labour migration on the global trade agenda. However, it was important to balance the exigencies of the market with the needs of States.

32. Mr. Shamshur described the major characteristics of migration in Eastern Europe. He referred to the major geopolitical transformations, most notably the dissolution of the USSR and of Yugoslavia, as well as the painful process of transition from totalitarian political systems and centrally planned economies to those based on democratic principles and oriented towards the market. He also mentioned liberalization of exit and entry procedures and adoption of new border control regimes.

33. The countries concerned had become increasingly involved in intra- and extraregional migratory exchanges, most of them of short or medium term. For many people these trips, which were usually related to commercial activities and (often irregular) employment, constituted an essential part of their survival strategy under the new social conditions. Labour migration, or migration for employment per se, had been emerging as an important factor affecting the migration situation in the region. It called for the adequate protection of migrant workers through the development of the appropriate internal legislation, as well as elaboration of the relevant bilateral and multilateral arrangements.

34. Most Eastern European countries faced a huge transit migration movement which originated mostly in the Middle East, South and South-East Asia and Africa and ended in the west and south of Europe. Irregular migrants were being brought illicitly into the region by international gangs of traffickers. In the process of trafficking the most horrendous violations of human rights were committed, often against women. Within that context Mr. Shamsur drew attention to the plight of women from Eastern European countries trafficked to Western Europe or other parts of the world and forced into prostitution. He stressed that the perpetrators of such trafficking should be prosecuted both on the national and the international level.

35. Eastern European Governments were aware of the need to prevent the spread of xenophobic attitudes. Appropriate steps had been already taken to that effect.

36. Mr. Bustamante, speaking in his capacity as an expert member of the working group, explained that migration on the American continent was basically labour migration and that the largest flow of migrants, as well as of irregular migrants, was between Mexico and the United States of America. Mexico was a country of both emigration (to the United States and, on a small scale, to Canada) and of immigration (basically from Central American countries and, on a small scale, from South American countries). There was also migration between Colombia and Venezuela as well as migratory flows from Bolivia, Paraguay, Peru and Ecuador to Brazil and Argentina and, to a lesser degree, to Chile.

37. He said that the question of migration on the American continent was very interesting because there were positive aspects, for example, the legalizing of migrants in an irregular situation in Mexico, and there were also very primitive conditions and very serious systematic abuses of the migrants' rights.

38. He identified one obstacle to the enjoyment by migrants of their human rights as being legislation adopted in recent years that referred to possibly illegal migrants in terms of their ethnic characteristics. This had been the case of Proposition 187 in California which represented a particular case of the institutionalization of racism and xenophobia. He said that there were other countries where this unfortunate practice existed.

39. Another obstacle was the structural vulnerability of migrants to serious violations of labour and human rights; the further away from their countries of origin, the more vulnerable they became. This vulnerability stemmed from their lack of rights and the lack of power to raise questions concerning their rights with authorities of the host society. He was of the view that close attention should be paid to this concept by the working group when the question of obstacles was discussed in accordance with its mandate. In that connection, he pointed out that the mandate referred very specifically to racism and xenophobia as being problems associated with migrants and that the conceptual relationship between the structural vulnerability of migrants and its further reinforcement by racism and xenophobia should be discussed. Thus, racism and xenophobia were also important obstacles to the full respect of the human rights of migrants. He suggested that one way to combat racism and xenophobia was to accord migrants with specific rights under the legislation of the recipient State.

40. Mr. Bustamante also mentioned a recently completed unprecedented binational study undertaken by scholars from Mexico and the United States on migration from Mexico to the United States.

41. Regarding Western Europe, Mr. do Rosario said that migrants' rights were generally respected in the "Western European and Other" group of countries. Occasional cases of abuse, which in most of the countries were dealt with by the courts in an exemplary manner, were generally the work of extremist groups. There was, of course, the problem of clandestine migration, which meant a complete lack of protection. A number of other questions could also be raised in connection with the expulsion of people who in some circumstances had committed minor offences. It would be interesting to know where State sovereignty ended in matters of expulsion: for example, whether the principle of non-retroactivity of the law was respected, what remedies were available against such measures and, as far as family reunification was concerned, whether the different legislation and administrative practices made it easy for people to join their families.

42. In general, there was too little information about and publicity given to migrants' rights, although migrants made a positive contribution to the societies in which they lived.

43. Mr. do Rosario was in favour of holding an international conference on migration - a topic currently under discussion in the General Assembly - to take up the many questions that needed discussing.

3. Definition of migrants

44. The working group agreed to interpret the concept of migrants as contained in its mandate broadly. The experts agreed to use as a working tool the definition and interpretation of the concept of migrants given in a text submitted by IOM which read as follows:

> "In terms of the Constitutions of IOM, the definition of migrants, although mainly encompassing migrant workers, is stated somewhat more broadly:
>
> "The term 'migrant' in article 1.1 (a) should be understood as covering all cases where the decision to migrate is taken freely by the individual concerned, for reasons of 'personal convenience' and without intervention of an external compelling factor.
>
> "Within the category of 'migrant', irregular or undocumented migrants must too be recognized, irregular migration being a phenomenon that is growing into global crisis. From the above definition, it follows that 'migrant' does not refer to refugees, exiles or others forced or compelled to leave their homes. By contrast, the term 'migration' is descriptive of the process of the movement of persons, and thus includes the movement of refugees, displaced persons, uprooted people as well as economic migrants."

4. Vulnerability

45. The issue of vulnerability was the central theme of the deliberations of the working group. The five experts expressed their different perspectives on vulnerability relative to States of origin and States of destination; the role of internal legislation; problems linked to the integration of migrants into the host society (cultural, linguistic and religious differences), the relationship between State sovereignty and irregular migration; and problems relating to the trafficking of migrants. The experts agreed that an essential element in the understanding of vulnerability was the factor of powerlessness which, more often than not, characterized the migrant.

46. Powerlessness characterized the relationship of the migrant with a State and with the societal forces which rendered him or her powerless. The condition was not inherent to individuals, including migrants; it was created and imposed on migrants within the confines of a specific country.

47. It was agreed to use the criterion of vulnerability of migrants and to focus primarily on those migrants whose rights were less well protected and most frequently violated. In particular, concern was expressed about the situation of irregular migrants as well as women and children.

48. Specific problems associated with the vulnerability of migrants included their exploitation in the labour market (pattern of wages well below

established minimum standards and dangerous working conditions), racist-based hostility and violence directed at them, and xenophobia expressed through stereotyping and discrimination based on biased public opinion.

II. SECOND SESSION OF THE INTERGOVERNMENTAL GROUP OF EXPERTS

A. Organization of the session

Opening and duration of the session

49. The second session of the working group of intergovernmental experts on the human rights of migrants was held at the Palais des Nations, Geneva, from 16 to 20 February 1998. Mr. Jorge A. Bustamante (Mexico) continued to act as Chairman-Rapporteur. All members were present at all meetings.

Adoption of the agenda

50. At its first meeting, the working group, on the basis of the provisional agenda (E/CN.4/AC.46/1998/1), adopted the following agenda for its second session:

1. Adoption of the agenda

2. Implementation of Commission on Human Rights resolution 1997/15, entitled "Migrants and human rights".

Observers

51. The following States members of the Commission on Human Rights attended the session as observers: Brazil, China, Czech Republic, El Salvador, France, Germany, Guatemala, Indonesia, Italy, Malaysia, Mexico, Morocco, Philippines, Russian Federation, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela.

52. The following other States Members of the United Nations also attended the session as observers: Algeria, Bulgaria, Colombia, Dominican Republic, Estonia, Ethiopia, Gabon, Iran (Islamic Republic of), Portugal, Slovakia, Turkey and Yemen.

53. The following non-member State of the United Nations was also represented by an observer: Holy See.

54. Representatives of the following specialized agency and intergovernmental organizations attended the session as observers: International Labour Organization, European Community and International Organization for Migration.

55. Representatives of the following non-governmental organizations in consultative status with the Economic and Social Council attended the session as observers: Caritas Internationalis, Commission of the Churches on International Affairs of the World Council of Churches, Human Rights Advocates, Inc., Human Rights Watch, International Confederation of Free Trade Unions (ICFTU), North-South XXI and Women's International League for Peace and

Freedom. Representatives of the following non-governmental organizations without consultative status with ECOSOC also attended the session as observers: CISM-VENETO (Coordinamento Immigranti del Sud del Mondo).

Documentation

56. The working group at its second session had before it the following documents:

E/CN.4/AC.46/1998/1	Provisional Agenda
Further replies to the Secretary-General's invitation:	
E/CN.4/AC.46/1998/2	Submissions from Lebanon, the Russian Federation and the Council of Europe
E/CN.4/AC.46/1998/2/Add.1	Submission from Portugal
E/CN.4/AC.46/1998/2/Add.2	Submission from the International Indian Treaty Council
E/CN.4/AC.46/1998/2/Add.3	Submission from Cuba
Replies to the questionnaire of the working group:	
E/CN.4/AC.46/1998/3	Submission from Turkey, the International Labour Organization, the International Movement against All Forms of Discrimination and Racism and the Christian Coalition on Refugees and Migrants
E/CN.4/AC.46/1998/3/Add.1	Submission from the Instituto Católico Chileno de Migración and the Comisión Católica Argentina de Migraciones
E/CN.4/AC.46/1998/3/Add.2	Submission from North-South XXI
E/CN.4/AC.46/1998/3/Add.3	Submission from Malaysia
E/CN.4/AC.46/1998/3/Add.4	Submission from the Legal Information Centre of Human Rights in Estonia
E/CN.4/AC.46/1998/3/Add.5	Submission from the Czech Republic
E/CN.4/AC.46/1998/3/Add.6	Submission from the International Movement against All Forms of Discrimination and Racism
E/CN.4/AC.46/1998/3/Add.7	Submission from the Comisión Católica Española de Migracíon
E/CN.4/AC.46/1998/3/Add.8	Submission from Lebanon

E/CN.4/AC.46/1998/3/Add.9	Submission from the European Commission
E/CN.4/AC.46/1998/3/Add.10	Submission from Human Rights Advocates
E/CN.4/AC.46/1998/3/Add.11	Submission from the Dansk Flygtningehjaelp (Danish Refugee Council)
E/CN.4/AC.46/1998/3/Add.12	Submission from Croatia
E/CN.4/AC.46/1998/3/Add.13	Submission from the Obra Católica Portuguesa de Migraçoes
E/CN.4/AC.46/1998/3/Add.14	Submission from Belgium
E/CN.4/AC.46/1998/3/Add.15	Submission from Lithuania
E/CN.4/AC.46/1998/3/Add.16	Submission from Germany
E/CN.4/AC.46/1998/3/Add.17	Submission from the Philippines
E/CN.4/AC.46/1998/3/Add.18	Submission from the Marshall Islands
E/CN.4/AC.46/1998/3/Add.19	Submission from the Danish Refugee Council
E/CN.4/AC.46/1998/3/Add.20	Submission from Italy
E/CN.4/AC.46/1998/3/Add.21	Submission from Cuba
E/CN.4/AC.46/1998/3/Add.22	Submission from El Salvador
E/CN.4/AC.46/1998/3/Add.23	Submission from Peru
E/CN.4/AC.46/1998/3/Add.24	Submission from the United Kingdom of Great Britain and Northern Ireland
E/CN.4/AC.46/1998/3/Add.25	Submission from Dominica
E/CN.4/AC.46/1998/3/Add.26	Submission from the Sudan
E/CN.4/AC.46/1998/3/Add.27	Submission from Slovenia
E/CN.4/AC.46/1998/3/Add.28	Submission from Yugoslavia
E/CN.4/AC.46/1998/3/Add.29	Submission from Denmark
E/CN.4/AC.46/1998/3/Add.30	Submission from the World Council of Churches
E/CN.4/AC.46/1998/3/Add.31	Submission from Jordan
E/CN.4/AC.46/1998/3/Add.32	Submission from Sweden
E/CN.4/AC.46/1998/3/Add.33	Submission from Mexico

E/CN.4/AC.46/1998/3/Add.34	Submission from Uruguay
E/CN.4/AC.46/1998/3/Add.35	Submission from Human Rights Advocates
E/CN.4/AC.46/1998/3/Add.36	Submission from Guatemala
E/CN.4/AC.46/1998/3/Add.37	Submission from the International Migrants Rights Watch Committee
E/CN.4/AC.46/1998/3/Add.38	Submission from Israel
E/CN.4/AC.46/1998/3/Add.39	Submission from Iceland
E/CN.4/AC.46/1998/3/Add.40	Submission from El Salvador
E/CN.4/AC.46/1998/3/Add.41	Submission from Austria
E/CN.4/AC.46/1998/3/Add.42	Submission from Portugal
E/CN.4/AC.46/1998/3/Add.43	Submission from France
E/CN.4/AC.46/1998/3/Add.44	Submission from Norway
E/CN.4/AC.46/1998/3/Add.45	Submission from Ukraine
E/CN.4/AC.46/1998/3/Add.46	Submission from Venezuela
E/CN.4/AC.46/1998/3/Add.47	Submission from Italy
E/CN.4/AC.46/1998/3/Add.48	Submission from Mexico
E/CN.4/AC.46/1998/3/Add.49	Submission from the Danish Centre for Human Rights
E/CN.4/AC.46/1998/3/Add.50	Submission from Monaco
E/CN.4/AC.46/1998/3/Add.51	Submission from Bulgaria
E/CN.4/AC.46/1998/3/Add.52	Submission from Romania
E/CN.4/AC.46/1998/3/Add.53	Submission from Spain

Organization and methods of work

57. With regard to its methods of work, the working group decided to work in a combination of public and closed meetings. The working group held four public meetings and six closed meetings.

58. At its 1st meeting, the working group agreed that it would accept to work with the documentation in the original language only.

59. In response to criticism that the working group had not fully utilized the expertise and experience of intergovernmental and non-governmental

organizations that had been professionally involved in migrant issues over many decades, and in order to reaffirm its openness and interest in using these assets, the working group invited representatives of the International Labour Organization, the International Organization for Migrantion, the Office of the United Nations High Commissioner for Refugees and interested non-governmental organizations, in a separate meeting, to express their views on how to improve information-sharing and avoid duplication of activities. The working group took careful note of the views expressed concerning its future methodology of work and listened with interest to the views of those present regarding the definition of migrants tentatively used by the working group (see paragraph 44).

B. Analysis of replies to the questionnaire

60. At its 2nd plenary meeting, on 17 February 1998, the Chairman-Rapporteur explained that the work had been divided among the experts. He had taken the answers to question 1 of the questionnaire (see annex I) on the figures/estimates of total population, nationals abroad, non-nationals with work permits and irregular migrants. Mr. Pambou Tchivounda had taken question 2 on measures to strengthen the promotion, protection and implementation of the human rights of migrants. Mr. Shamshur had taken question 3 on manifestations of racism, xenophobia and other forms of intolerance. Mr. do Rosario had taken question 4 on ratifications of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and two ILO Conventions, and Mr. Quayes would work on the obstacles to the enjoyment of the human rights of migrants.

61. The Chairman-Rapporteur, speaking in his capacity as an expert member of the working group, stated that the figures provided a sufficient database of demographic information to justify the continued investigation of this topic by the working group. He gave an outline of the statistics received with regard to the number of nationals living abroad, noting that the Philippines was the country with the highest percentage of nationals abroad (11 per cent), followed by Mexico (8 per cent), Spain (7 per cent) and Italy (5 per cent).

62. With regard to the number of non-nationals having authorization to work in the country, he noted that statistics were congruent with whether or not the country in question was a receiving country. He reported that the highest figures for the percentage of non-nationals having authorization to work came from Germany, followed by Argentina, Denmark, Lebanon and Malaysia.

63. With the exception of Malaysia, the estimates for the number of irregular migrants were quite small.

64. In dealing with the measures being taken to strengthen the promotion, protection and implementation of the human rights of migrants, Mr. Pambou Tchivounda stated that the basic issue in that regard was one of national policy. However, he noted that while the political authority of the State was a central reference in this issue, non-governmental organizations (NGOs) had a major role to play. That role usually either took the form of assisting migrants on a day-by-day basis, or was in terms of input into a

State's legislation. He commented on the influence of NGOs on public bodies and opinion, with special reference to the clear effect NGOs had on the lives of migrants through direct contact with them on a daily basis.

65. He noted that there was a clear trend in contemporary international relations towards an enhanced role for NGOs. NGOs today provided considerable information on matters such as those dealt with by the working group.

66. It was important also to bear in mind that the particular ideology espoused by some NGOs might not always be supportive of migrants or their rights and thus it was impossible to make any general statements to the effect that NGOs necessarily supported the migrant cause.

67. With regard to the measures being taken on the rights of migrants, a distinction should be made between legal/judicial measures and other measures. The trends indicated that in general, most legislation in this area was recent or even still in the process of being drafted, and that legislation tended to be framed in general terms and was compartmentalized. Not all States had the same position with regard to international law. Some States were very open to incorporating international law into domestic legislation, whereas others remained committed to a focus on their own domestic legislation.

68. Mr. Shamshur, in his presentation on manifestations of racism, xenophobia and other forms of discrimination against migrants, commented that although the question was brief, it was a key question for the working group and the relevance of its activities. He expressed the view that the responses to this item showed a degree of openness on the part of respondents. Fifteen countries had acknowledged the incidence of racism and xenophobia. He noted that while those respondents were mainly of traditionally receiving countries, that was not exclusively the case. The responses showed that the migration landscape was becoming more varied, which made analysis increasingly complicated.

69. He commended the Government of the United Kingdom of Great Britain and Northern Ireland for providing the exact figures on manifestations of racism, xenophobia and other forms of discrimination against migrants in response to the questionnaire, and also noted the detailed response of the Government of the Czech Republic. The figures for racially motivated crimes did not always refer to migrants per se; they nonetheless provided an apparent indicator of the level of tolerance in society.

70. He mentioned that the core of the problem remained at the level of day-to-day practices, as those were areas where the primary manifestations occurred and where they proved to be the most tenacious. Manifestations of racism, xenophobia and discrimination could not be changed through the adoption of legislation alone. Other measures needed to be taken at all levels of society, including the proper implementation of legislation, integration policies, information and education.

71. He noted that some countries had expressed concern over discrimination against their citizens in other countries, especially female workers, and the escalation of violence experienced by workers abroad.

72. Referring to the report from the Government of Mexico, he mentioned that arguments had been voiced in favour of bilateral and multilateral measures to combat racism, xenophobia and discrimination. He also stressed the role to be played by United Nations bodies in that respect.

73. With respect to the steps taken by States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Convention Nos. 97 and 143, Mr. di Rosario said that the Philippines was the only responding country to have ratified the former Convention. According to an NGO, Sri Lanka had also ratified it. According to the Instituto Católico Chileno de Migración, the Chamber of Deputies in Chile had approved ratification. Additionally, the Comisión Católica Argentina de Migraciones had reported that in 1996 a draft law on ratification had been submitted to Parliament in Argentina.

74. Mr. di Rosario noted that only nine countries had ratified the 1990 Convention, namely Bosnia and Herzegovina, Cape Verde, Colombia, Egypt, Morocco, the Philippines, Seychelles, Sri Lanka and Uganda. Numerous States were in the process of examining the compatibility of the Convention with domestic policy and legislation. He also noted that the ILO Convention No. 97 had been ratified by 11 States responding to the questionnaire out of 41 ratifications and that ILO Convention No. 143 had been ratified by 3 countries responding to the questionnaire out of 18 ratifications.

75. Mr. Quayes addressed the communications received in response to the first note from the Secretary-General requesting information and comments in relation to the mandate of the working group, i.e. obstacles to the full enjoyment of the human rights of migrants and recommendations to strengthen the same. The responses received from Governments, intergovernmental organizations and non-governmental organizations tended to fall into discernible patterns. Government responses by and large focused on domestic regulations concerning migrant labour, measures including legislation to protect the rights of migrant nationals abroad. One Government took a regional overview in the context of the historical movements of people and their consequences following political changes affecting not only national boundaries but also national identities. Another Government, in positing the complexities of the issue and the divergence of perception and priorities, stressed the need for cooperation, both bilateral and international. Intergovernmental organizations responded mainly not on the specifics of the mandate of the working group but rather on the broader question of migration and migrants as it related to their respective context and competence. They frequently referred to published reports and recommendations. One communication touched on the potential of duplication of work between that organization and the working group. The IOM provided documentation that, in addition to generalities concerning the broad theme of migration, also had chapters bearing on the mandate of the working group. NGOs' responses fell into two categories: one listed incidences of abuse, the other provided background on the theme and suggested possible corrective measures.

76. Mr. Quayes's general assessment of these inputs was that the responses fell short of adequately addressing the questions of obstacles, root causes of vulnerability or recommendations specifically aimed at strengthening the protection of the human rights of migrants. He observed that such a

preliminary assessment reinforced the relevance of the working group's decision to draft a more focused questionnaire and seek information of an empirical/statistical nature. He reflected on the fundamental question of obstacles and how the responses to the questionnaire read the issue. He wondered what story the statistics told, and gave the example of the government responses to the question of the incidence of racist-based hostilities which, he held, spoke of a growing awareness of the problems faced by migrants. However, it was unclear whether this awareness was born of an understanding of migrants' vulnerability or the Government's cognizance of only the social repercussions. This second-level story lay therefore in whether the response was meant to address the vulnerability of migrants or to justify the tightening of laws pertaining to migration and migrants. The latter clearly would only promote xenophobic tendencies on a larger scale.

77. Mr. Quayes also felt that the data, while providing a fairly accurate indication of the migrants' situation, gave only part of the story with problems of ethnicity, racism, etc. being subsumed in the statistics on migrants. The responses to such abuses in society also could provide pertinent information on whether the particular society took a repressive approach (i.e. enforcing law and order) or a human rights approach.

78. Mr. Quayes also spoke of the detailed references to domestic laws, etc. and regional standards in many government responses. However, the acknowledgment of increasing manifestations of discrimination, hostility and even degrading treatment against migrants indicated that there was a need to take a fresh look. Enforcement of the law was not value-neutral, and there was scope for weighing whether society was governed by a culture of rule by law or rule of law. The former might be defined as the enforcement of deficient laws while the latter was legislation for the benefit of the wider community, free of protection gaps and discrimination.

79. He considered that the responses to the questionnaire had provided useful statistical and other information to enable the working group to proceed with its task and hoped that these and other responses received subsequently would assist the working group in formulating its recommendations.

C. General Debate

80. Some participants stated that the activities of the working group should not duplicate those of competent intergovernmental organizations, specialized agencies, treaty bodies, etc. That included avoiding attempts to give a new definition of migrants or to establish new typologies of them. It was also generally felt that in view of the abundance of existing norms contained in human rights instruments, the working group should not try to elaborate any additional rights for migrants.

81. Some participants stressed the sovereign right of each State to control migration in its territory and to adopt for that purpose appropriate legislation in accordance with international human rights norms. However, it was also emphasized that persons violating the immigration laws should not be subjected to violations of their basic and fundamental human rights.

82. Reference was often made to the requirements of the international labour market as a factor influencing migration flows.

83. Some participants, at the invitation of the Chairman-Rapporteur, gave information concerning their own countries with respect to four questions raised in the questionnaire. Others expressed their views about the replies which had been received. The questionnaire was also the subject of a discussion, including criticism expressed by some participants.

84. Several participants representing international and non-governmental organizations expressed their readiness to assist the working group, in particular through the provision of information, analysis and the formulation of recommendations. The opinion was also expressed that the working group should be given the authority to take affirmative steps to examine violations of the rights of migrants according to existing international standards set forth in the 1990 Convention.

85. One participant appealed to the working group to review its working definition of migrants because persons who were compelled to leave their country of origin were excluded from the definition which the working group had agreed tentatively to use.

86. Some participants stressed the fact that migrants were human beings who were often obliged to leave their own countries for economic reasons. It was recalled that one of the effects of globalization had been to enlarge the gap between the North and the South. Migrants required the assistance of others and the international community should take concrete measures of solidarity on their behalf. The issue of the need to properly inform public opinion was mentioned, in particular in order to avoid racism and xenophobia. Migrants were often victims of prejudice and persecution and legislation affecting their lives was often inadequate. In that connection, several participants commented on the importance of the issue of vulnerability.

87. Some participants pointed to the need for migrants to be given well-regulated protection. Migrants must have access to and be able to communicate with the consular representatives of their country of origin. This implied a duty for the country in which they resided to inform them of this right. It was felt that the working group also needed to focus on the rights of the children of migrants, specifically the registration of births so that the identity of the children could to be established, on the rights of individuals or groups with limited or no legal protection, and on the specific human rights violations committed against women migrants, a particularly vulnerable group. A suggestion was made that a gender perspective be added to a future questionnaire, focusing, for example, on the measures countries had taken to assist both documented and irregular women migrants. One participant was of the opinion that the working group should focus on the issues of attacks against migrants and prolonged detention and expulsion of migrants and recommended that these issues be examined in the context of racism, including that a request be made by the working group to the Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance to analyse the situation in his next report to the Commission on Human Rights. Another participant felt that during the coming year, the working group might focus on racism and xenophobia against migrants and

contribute to the preparatory work being done for the upcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

88. One participant felt that another area on which the working group should focus was violations of the rights of migrant workers committed by border police, which were viewed as some of the most egregious violations committed against migrants worldwide and which affected their right to life. This might be done by following procedures developed by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Arbitrary Detention of the Commission on Human Rights.

89. Many participants expressed their appreciation to the working group for its accomplishments during 10 days of deliberations and recognized the difficulties faced during its sessions. They commended the unprecedented number of replies that had been received from over 40 Governments and over 20 intergovernmental and non-governmental organizations. They strongly supported the renewal of the mandate of the working group, which would give it an opportunity to develop its methodology on gathering information on obstacles, analysing the information received and elaborating recommendations to the Commission on Human Rights.

III. PRELIMINARY CONCLUSIONS REACHED AT THE END OF THE SECOND SESSION AND OBSERVATIONS REGARDING AN EXTENSION OF THE MANDATE OF THE WORKING GROUP

90. The working group of experts divided among its members the work of analysing the responses received to the questionnaire and to the Secretary-General's invitation to submit information. When the results of the analyses were reported to the group, there was a unanimous reaction that the number of responses (40, with more expected) to the questionnaire had been unprecedented. This was an encouraging first sign, taking into account the working group's objective of eliciting empirical data to assess the problems faced by migrants and which are referred to in the resolution.

91. It was noted as a second finding that more than one third of the States responding to the questionnaire expressly recognized the existence of problems of prejudice, xenophobia or racial discrimination against migrants in their respective countries. This was interpreted by the group of experts as an empirical indication of awareness of widespread violations of the human rights of migrants.

92. A third important finding was that there was an enormous task ahead of the working group. This was due to the complexity of the problems and the great diversity of experiences described in the responses to the questionnaire. An analysis of those problems and experiences would provide a useful basis for the working group to start the elaboration of recommendations as requested in Commission resolution 1997/15.

93. The working group required more time to study problems that resulted from the lack of adherence to international norms concerning migrants, including the International Convention on the Protection of the Rights of All

Migrant Workers and Members of Their Families. Those problems had come to light during the working group's preliminary analysis of the responses received.

94. The working group took note of the valuable contributions of representatives of observer Governments, intergovernmental organizations and non-governmental organizations in plenary meetings on elements that were expected to be contained in its final report. Some of the elements that were mentioned were (a) a review of international instruments relevant to the problems mentioned in resolution 1997/15; (b) a review of existing statistical information and data on those problems; (c) the promotion of the ratification of relevant United Nations and ILO conventions, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; (d) the need to expand the gathering of information through a follow-up questionnaire; (e) the need to introduce a gender perspective as well as a children dimension when addressing the problems of migrants; (f) the need to promote full compliance with the relevant articles of the Vienna Convention on Consular Relations so as to ensure that migrants could communicate with their respective consular representatives in the countries in which they found themselves; (g) the need to ensure the promotion and protection by all Governments of the human rights of undocumented or irregular migrants; and (h) the need for a permanent United Nations mechanism to serve as a clearing-house for information on questions relevant to the full protection of the human rights of migrants.

95. The working group addressed itself to drawing up a programme of work consistent with its mandate to enable it to elaborate a set of recommendations to strengthen the promotion, protection and implementation of the human rights of migrants (see annex II). This work programme flows logically from the deliberations of the experts at the first two sessions, including a consideration of the elements enumerated above.

96. The working group, therefore, recommends that the Commission on Human Rights at its fifty-fourth session consider authorizing the working group to meet twice annually for two sessions of five days each.

Annex I

QUESTIONNAIRE
ON THE HUMAN RIGHTS OF MIGRANTS

1. What are the latest figures or estimates for:

- total population, including non-nationals, preferably by nationality of origin;
- number of nationals abroad, preferably by country of residence;
- non-nationals having authorization to work in the country;
- estimate of irregular migrants, including visa abusers, by country of origin.

2. What measures are being taken to strengthen the promotion, protection and implementation of the human rights of migrants, such as:

- legal measures;
- public information and education;
- provision of direct assistance and services;
- other measures, including bilateral and multilateral arrangements.

3. Have there been manifestations (How many cases?) of racism, xenophobia and other forms of discrimination against migrants in your country and against your nationals in another country?

4. What steps have been taken in order to ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Labour Organization (ILO) Convention concerning Migration for Employment (Revised), 1949 (No. 97), and the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No.143)?

Annex II

PROGRAMME OF WORK

Element 1

In-depth examination of information, statistics and normative sources currently available, including inputs from pertinent intergovernmental and non-governmental organizations.

Element 2

Consultations and interaction with United Nations treaty bodies and special mechanisms relevant to the mandate of the working group, in order to compile information on the human rights of migrants and to avoid duplication of activities.

Element 3

Eventually, a follow-up to the questionnaire.

Element 4

Organization of expert meetings, through possible voluntary contributions, */ on specific issues, such as vulnerability of migrants, gender perspectives, trafficking of migrants, xenophobia (ways to measure and counteract), gaps in the protection of human rights of migrants, etc.

Element 5

Elaboration of recommendations to strengthen the promotion, protection and implementation of the human rights of migrants.

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*/ The working group, taking into account the United Nations budgetary constraints, would be looking for voluntary financial support for the organization of such events.